



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>

DOCKET NO.: CWA-08-2003-0092

IN THE MATTER OF:

CODINGTON COUNTY HIGHWAY DEPT.

1201 10th Street, NW

Watertown, South Dakota 57201

Respondent

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FINAL ORDER

Pursuant to 40 C.F.R. § 22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby ORDERED to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

September 17, 2003

DATE

SIGNED

Alfred C. Smith

Regional Judicial Officer



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

IN THE MATTER OF:)	Docket No. CWA-08-2003-0092
)	
Codington County Highway Department)	COMPLAINT AND EXPEDITED
1201 10 th Street, NW)	SETTLEMENT AGREEMENT
Watertown, South Dakota 57201)	
Respondent.)	

Complainant, United States Environmental Protection Agency, Region 8 (“EPA”) or (“Complainant”), and Codington County Highway Department (hereinafter “Respondent”) by their undersigned representatives, hereby consent and agree as follows:

A. PRELIMINARY STATEMENT

1. EPA has jurisdiction over this matter pursuant to section 311(b)(6) of the Clean Water Act ("Act"), 33 U.S.C. §1321(b)(6).

2. Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), as amended by the Oil Pollution Act Amendments of 1990, 33 U.S.C. § 2701 et seq. promulgated regulations at 40 CFR Part 112, which govern this matter.

3. This Complaint and Expedited Settlement Agreement (“CESA”) is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3) of the Consolidated Rules of Practice.

4. Respondent admits the jurisdictional allegations contained herein and neither admits nor denies the specific factual allegations contained herein.

5. Respondent waives its rights to a hearing before any tribunal, to contest any issue of law or fact set forth in this CESA.

6. Complainant asserts that settlement of this matter is in the public interest, and Complainant and Respondent agree that entry of this CESA and Final Order without further litigation and without adjudication of any issue of fact or law, is the most appropriate means of resolving this matter.

7. This CESA, upon incorporation into a Final Order, applies to and is binding upon EPA and upon Respondent, and Respondent’s officers, directors, employees, agents, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent’s

responsibilities under this agreement.

8. This CESA contains all terms of the settlement agreed to by the parties.

9. Respondent is a "person" within the meaning of section 311(a)(7), 33 U.S.C. §1321(a)(7) of the Act.

10. Respondent is an "owner and operator" of an "onshore facility" as those terms are defined in sections 311(a)(6) and (10), respectfully, 33 U.S.C. §§1321(a)(6) and (10) of the Act.

11. The undersigned EPA, Region 8 officials issue this CESA under the authority vested in the Administrator of EPA by Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. §1321(b)(6)(B)(i), which authorizes EPA to bring an action for civil administrative penalties against Respondent who has violated, or is in violation of, a requirement or prohibition of the Act.

B. ALLEGED VIOLATIONS

1. The Respondent owns and/or operates a bulk fuel storage facility located at 1201 10th Street, Watertown, South Dakota (hereinafter "the facility").

2. On September 18, 2001, Paul Schnitz, an authorized EPA inspector, inspected the facility to ascertain compliance with the Spill Prevention Control and Countermeasure (SPCC) regulations found at 40 CFR Part 112.

3. EPA determined that Respondent failed to prepare and implement a written SPCC Plan for the facility in accordance with the regulations at 40 CFR §112.7(e) and required by 40 CFR §112.3(a).

4. Respondent's failure to comply with regulations at 40 C.F.R. Part 112 setting forth the requirements for preparation and implementation of SPCC Plans constitutes a violation of CWA § 311(b)(6)(A), 33 U.S.C. § 1321(b)(6)(A).

5. Pursuant to 33 U.S.C. § 1321(b)(6)(B)(i), Respondent is subject to a civil penalty in an amount up to \$10,000 per violation. This penalty has been increased to \$11,000 per violation under the Civil Monetary Penalty Inflation Adjustment Rule, promulgated at 40 C.F.R. Part 19, for violations occurring after January 30, 1997, which includes the violations alleged herein.

6. Upon consideration of the penalty assessment criteria found in section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8), in addition to such other factors as justice may require, the seriousness of the violation or violations, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts to mitigate the effects of the discharge, the economic impact of the penalty of the violator, and upon

consideration of the entire record herein, EPA offers this CESA under its expedited enforcement procedures in order to settle the violations at the facility based upon the findings noted above, for the total civil penalty amount of thirteen thousand six hundred thirty two dollars **(\$13,632.00)**.

C. CIVIL PENALTY

1. Pursuant to section 311(b)(8) of the Act, 33 U.S.C. §1321(b)(8), EPA has determined that an appropriate civil penalty to settle this action is the amount of thirteen thousand six hundred thirty two dollars **(\$13,632.00)**.

2. Respondent agrees and consents to the following:

a. After Respondent has received the Final Order in this matter, Respondent shall pay a civil penalty of thirteen thousand six hundred thirty two dollars **(\$13,632.00)** in accordance with the following schedule:

1st payment of \$632.00 is due and must be received by not later than thirty days after the receipt of the Final Order;

2nd payment of \$6,500 is due and must be received by not later than June 1, 2004;

3rd and final payment of \$6,500 is due and must be received by not later than November 1, 2004;

by remitting a cashier's or certified check **payable to "Oil Spill Liability Trust Fund"**, with the docket number and Respondent's name written on the check, to:

Jane Nakad (8ENF-T)
Technical Enforcement Program
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

b. A copy of the transmittal of payment shall be sent simultaneously to the following address:

Tina Artemis
Regional Hearing Clerk
U.S. EPA, Region 8 (8RC)
999 18th Street, Suite 300
Denver, Co 80202-2466

(and)

Brenda L. Morris
Enforcement Attorney
U.S. EPA, Region 8 (8ENF-L)
999 18th Street, Suite 300
Denver, Co 80202-2466

1. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on

debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if the penalty is not paid when due. Interest will be assessed at the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees. In addition, a penalty charge of six (6) percent per year will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due. Any such penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 4 C.F.R. §§ 102.13(d) and (e).

D. TERMS AND CONDITIONS

1. This Agreement shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law.

2. Failure by Respondent to comply with any of the terms of this CESA shall constitute a breach of the agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

3. Nothing in this CESA shall be construed as a waiver by the EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this CESA.

4. Each undersigned representative of the parties to this CESA certifies that he or she is fully authorized by the party represented to bind the parties to the terms and conditions of this CESA and to execute and legally bind that party to this CESA.

5. The parties agree to submit this CESA to the Regional Judicial Officer, with a request that it be incorporated into a Final Order.

6. This Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of the violations alleged in this CESA.

7. Each party shall bear its own costs and attorneys fees in connection with all issues associated with this CESA.

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8, Office of Enforcement, Compliance
and Environmental Justice, Complainant.**

Date: 8/11/03

By: SIGNED
Elisabeth Evans, Director
Technical Enforcement Director

Date: 9/11/03

By: David J. Janik
Michael T. Risner, Director
David Janik, Supervisor
Legal Enforcement Program

Date: 8/12/03

By: SIGNED
Brenda L. Morris, Attorney
EPA Region 8
999 18th Street, Suite 300-ENF-L
Denver, Colorado 80202-2466

**CODINGTON COUNTY HIGHWAY
DEPARTMENT
Respondent.**

Date: 8-12-03

By: SIGNED, Vice Chair
Carol Johnson, Chairperson
Codington County Commission

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED CONSENT AGREEMENT/FINAL ORDER** in the matter of **CODINGTON COUNTY HIGHWAY DEPT., DOCKET NO.: CWA-08-2003-0092** was filed with the Regional Hearing Clerk on September 17, 2003

Further, the undersigned certifies that a true and correct copy of the document was delivered to Brenda Morris, Enforcement Attorney, U.S. EPA - Region 8, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt on September 17, 2003, to:

Mr. Vincent Foley, Esq.
Codington County State Attorney
P.O. Box 1384
Watertown, SD 57201

and

Codington County Highway Department
1201 10th Street, NW
Watertown, South Dakota 57201

and

Commander
Finance Center (OGR)
U.S. Coast Guard
1430 A Kristina Way
Chesapeake, VA 23326

September 17, 2003

SIGNED _____

Tina Artemis
Regional Hearing Clerk

**THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE
ON SEPTEMBER 17, 2003.**

